

[Advisory Opinion 1998-2]

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

February 18, 1998

A County employee requested advice as to whether she may accept tickets from the American Film Institute (“AFI”) to attend an AFI awards dinner.

PERTINENT FACTS

As set forth in your memorandum, the pertinent facts are as follows:

1. The County has selected AFI, pursuant to a competitive selection process, to be the tenant and to program the Silver Theatre. That Theatre is the key resource in the revitalization of the Downtown Silver Spring Urban Renewal Area.
2. The County and AFI currently are negotiating the Silver Theatre agreement.
3. To finalize the agreement, representatives of the County, including you, will be attending a meeting of the Executive Board of AFI in Los Angeles.
4. AFI has requested that you attend an awards dinner on January 19, in order for you to meet some of the other principals from the Los Angeles campus of AFI and administrative personnel. The dinner is a cultural event and a fundraiser for AFI.
5. The cost of a ticket for the awards dinner is \$1,000. (The value of the dinner ticket is \$125; the remaining \$875 is designated as a donation to AFI).
6. [One individual] would receive one ticket; [Another] would receive two tickets (one for himself and one for his spouse).

APPLICABLE LAW

The Montgomery County Ethics Law prohibits a county employee from knowingly accepting a direct or indirect gift from any individual or organization that the public employee knows or reasonably should know:

* * *

(2) does business with the County agency with which the public employee is affiliated;

(3) owns or operates a business that is regulated by the County agency with which the public employee is affiliated; or

(4) has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee's official duties.

Montgomery County Code, §19A-16(c)¹ However, §19A-8(a) authorizes the Ethics Commission, after receiving a written request, to grant to a public employee a waiver of the prohibitions of this Chapter . . . if it finds that:

(1) the best interests of the County would be served by granting the waiver;

(2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and

¹Subsection (c) does not apply to:

- (1) meals and beverages under \$50 per event or a higher amount, not to exceed \$100, that the Commission sets;
- (2) ceremonial gifts or awards with a resale value of \$100 or less, if the gift or award commemorates an event or achievement associated with the public employee.
- (3) items of personal property, other than cash, worth less than \$10;
- (4) reasonable expenses for food, travel, lodging, and scheduled entertainment of the public employee, given in return for the public employee's participation in a panel or speaking at a meeting;
- (5) gifts to a public employee who must file a public financial disclosure statement under subsection 19A-17(a), if the gift:
 - (A) is a courtesy extended to the office; and
 - (B) consists of tickets or free admission for the employee and one guest to attend a charitable, cultural, civic, labor, trade, sports, or political event, including meals and beverages served at the event;
- (6) any item that is solely informational or of an advertising nature, including a book, report, periodical, or pamphlet, if the resale value of the item is \$25 or less;
- (7) a gift to the employee or a member of the employee's immediate family if:
 - (A) the value of the gift is less than \$150, and
 - (B) the gift is given for a wedding, graduation, birth of a child, or similar non-recurring personal milestone;
- (8) gifts from a relative;
- (9) honoraria or awards for achievement; or
- (10) a specific gift or class of gifts which the Commission exempts from this Section after finding in writing that accepting the gift is not detrimental to the impartial conduct of the business of a County agency.

- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

WAIVER DECISION & ADVISORY OPINION

After considering the pertinent facts in the light of the applicable law, the Commission finds that:

1. the tickets to the awards dinner have a market value of \$1,000;
2. acceptance of free tickets from AFI would constitute receipt of a gift;
3. AFI does business with the County agency with which both [individuals] are affiliated;² and
4. acceptance of the tickets from AFI is prohibited, absent a waiver.

After carefully considering the criteria for a waiver under §19A-8(a), the Commission concludes, unanimously, that none of the criteria are met under the circumstances presented by this request. Therefore, the Commission will not grant the requested waiver.

[The requestors also... asked if [they] may attend the awards dinner as the guest of a county employee who is permitted to accept such gifts under §19A-16(d)(5). That section provides that the prohibitions of subsection (c) do not apply to gifts to a public employee who must file a public financial disclosure statement under subsection 19A-17(a), if the gift is a courtesy extended to the office and consists of tickets or free admission for the employee and one guest to attend a charitable, cultural, civic, labor, trade, sports, or political event, including meals and beverages served at the event.

The Commission [advised] that [the individuals] may attend the awards dinner as a guest of a county employee who is permitted by §19A-16(d)(5) to accept two tickets to the awards dinner. However, the Commission also notes that the employee who files the public financial disclosure statement must report the acceptance of *two* tickets, each valued at \$1,000, on his or her statement. If [the individuals] attend the dinner as a guest of another employee, [they] must provide a copy of this letter to that employee. Thereafter, that employee should transmit a written acknowledgment stating that he or she has received a copy of this letter.

² AFI also has an identifiable economic interest that is different from that of the general public, which you may substantially affect in performing your official duties.